Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

(3)

NO. 88-543

THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

JEAN LEONARD HARRIS,

Petitioner,

vs.

DEPUTY DISTRICT ATTORNEY ANTHONY SAMSON, individually and in his official capacity; DISTRICT ATTORNEY INVESTIGATOR HAROLD WAIGHT, individually and in his official capacity; COUNTY OF SAN DIEGO; RONALD HERPOLSHEIMER; JAMES LORENZ; MYRON KLARFELD,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

# Brief for Respondent Myron Klarfeld

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701 "B" Street, Suite 1400
San Diego, California 92101
(619) 231-8666

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JEAN LEONARD HARRIS,

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# Brief for Respondent Myron Klarfeld

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QUESTIONS PRESENTED FOR REVIEW

A. SINCE THE PETITION FOR WRIT OF CERTIORARI WAS NOT TIMELY FILED UNDER RULE 20, SHOULD THE SUPREME COURT CONSIDER THE PETITION?

B. HAS PETITIONER PRESENTED ANY "SPECIAL AND IMPORTANT REASONS" UNDER RULE 17 WHY THE SUPREME COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI?

C. HAS PETITIONER COMPLIED WITH THE THE RULE 21 CONTENT AND FORM REQUIREMENTS FOR THE PETITION OF WRIT OF CERTIORARI?

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## JURISDICTION

Petitioner has sought review of this case by Petition for Writ of Certiorari pursuant to 28 U.S.C. § 1254(1).

However, the Petition was not timely filed under Rule 20 and therefore this Court should not consider the Petition. Petitioner had 90 days from the Court of Appeals' judgment on January 25, 1988 as prescribed by Rule 20.2 and 28 U.S.C. § 2101(c) in which to file his Petition. (That 90-day period expired on or about April 24, 1988.) The Petition was not filed with this Court until July 12, 1988.

Petitioner has argued the time for filing his Petition was tolled.

This is incorrect. Rule 20.4 does delay the time for filing a Petition so that the period begins to run from when a petition for rehearing, if any, is denied or a subsequent judgment on the rehearing is entered. However, Petitioner never filed a petition for rehearing with the Court of Appeals. On February 8, 1988, Petitioner did file with the Court of Appeals a "Petition for Rehearing En Banc" which Supreme Court Chief Deputy Clerk Francis J. Lorson recognized did not toll the time for filing the Petition for Writ of Certiorari in his letter to Petitioner of July 13, 1988. See discussion on pages 17-21, infra. Therefore, the Supreme Court should not consider the Petition since it was filed well outside

the 90-day period after the Court of Appeals judgment on January 25, 1988.

3.

STATEMENT OF THE CASE

Petitioner brought a 42 U.S.C. § 1983 claim against all of the Respondents named herein alleging that Respondents had violated his Fourth Amendment rights as a result of a search of his office and residence and a seizure of documents. This action was brought despite the fact that the San Diego County Municipal Court criminal proceeding against Petitioner determined that none of Petitioner's federal constitutional rights were violated by the actions taken in obtaining the search warrant and searching

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Petitioner's office pursuant to that warrant.

Regardless of what Petitioner might say in his Statement Of The Case in an attempt to cloud the issues, the Municipal Court expressly ruled that the searches and seizure in question did not violate any of Petitioner's federal constitutional rights. This ruling was the basis on which the District Court granted Respondents' Motions for Summary Judgment at the District Court level under the doctrine of collateral estoppel.

The Court of Appeals affirmed the District Court's dismissal of his section 1983 claim. The Court of Appeals ruled that the collateral estoppel doctrine was correctly applied

by the District Court since the Fourth Amendment issue underlying Petitioner's civil action was fully litigated in the Municipal Court proceeding.

Significantly, the Court of Appeals further ruled that Petitioner's arguments that collateral estoppel did not bar his civil rights claim were "entirely without merit" and awarded attorneys' fees to Respondents pursuant to 42 U.S.C. § 1988 which allows defendants in section 1983 actions to recover attorneys' fees when the plaintiff's action is frivolous.

With this Petition for Writ of Certiorari, notwithstanding the fact it was not timely filed, Petitioner seeks to have this Court again review and decide settled issues in this case

without stating a single "special and important reason" under Rule 17 why the Supreme Court should grant his Petition.

4.

SUMMARY OF ARGUMENT

The gravamen of Petitioner's section 1983 Complaint was that his Fourth Amendment rights were violated by the search of his office and residence, and the seizure of documents pursuant to a search warrant issued without probable cause. The Municipal Court judge hearing the matter ultimately ruled that the searches and seizures in question were with probable cause under applicable California and federal law and did not violate Petitioner's Fourth Amendment or other constitutional rights.

In the subsequent section 1983 action alleging a violation of his Fourth Amendment rights, the District Court granted all of the Respondents' Motions for Summary Judgment relying primarily on the doctrine of collateral estoppel since Petitioner was attempting to relitigate the same constitutional issues already raised and ruled on in the Municipal Court. On appeal, the Ninth Circuit affirmed the District Court's dismissal of his section 1983 claim on the same grounds of collateral estoppel. Petitioner then chose to attempt to file the instant Petition for Writ of Certiorari which is seriously defective in at least three respects.

First, as already discussed under the "Jurisdiction" section of this

brief, supra, this Petition was not timely filed as required by Rule 20. For that reason, the Court should not consider the Petition. Petitioner had 90 days from the Court of Appeals' judgment on January 25, 1988 as prescribed by Rule 20.2 and 28 U.S.C. § 2101(c) in which to file his Petition. The Petition was not filed with this Court until July 12, 1988, approximately 78 days late.

Second, Petitioner has not presented any "special and important reasons" using the guidelines contained in Rule 17.1 for the Supreme Court to review the questions presented by Petitioner to this Court.

Third, Petitioner has also failed to comply with the requirements

of Rule 21 governing the content and form of the Petition for Writ of Certiorari. Petitioner has manifestly failed to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration by this Court. Further, Petitioner's rambling prose filling 41 pages is well outside the 30-page limit imposed by Rule 21.

For all these reasons, the Supreme Court clearly should not use its sound judicial discretion to grant Petitioner's Petition for Writ of Certiorari.

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## ARGUMENT

### A.

### THE PETITION FOR WRIT OF CERTIORARI WAS NOT TIMELY FILED UNDER RULE 20 AND THEREFORE THE SUPREME COURT SHOULD NOT CONSIDER THE PETITION

On January 25, 1988, the Ninth Circuit Court of Appeals filed a Memorandum Opinion, and judgment was entered, affirming the District Court's dismissal of Petitioner's section 1983 claim that Respondents had violated his Fourth Amendment rights. (Appendix "A.")

On or about February 8, 1988, Petitioner filed with the Ninth Circuit a document entitled "Petition for Rehearing En Banc of the Memorandum Decision of January 25, 1988" which requested an en banc panel of the Ninth

Circuit, not a rehearing before the original three-judge panel, to review the decision.

In response, on April 7, 1988, the Ninth Circuit issued an Order which stated, in its entirety:

> The panel, as constituted above, has unanimously voted to reject the suggestion for a rehearing en banc.
>
> The full court has been advised of the suggestion for en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).
>
> The suggestion for a rehearing en banc is REJECTED. (Appendix "B.")

On or about July 1, 1988, Petitioner attempted to file his Petition for Writ of Certiorari by mail with the Supreme Court. This Petition was rejected by the Chief Deputy Clerk

of the Supreme Court, Francis J. Lorson, in his letter to Petitioner of July 13, 1988. (Appendix "C.") Mr. Lorson noted that Petitioner's Petition was not presented on the correct size paper as required by Rule 33. More importantly, Mr. Lorson stated that the Petition was out of time. Mr. Lorson's letter stated, in pertinent part, that:

> Since judgement [sic] was entered by the Court of Appeals on January 25, 1988, the time to file this petition expired April 24, 1988. The petition for rehearing en banc order does not toll the time for filing a petition in this Court.

Rule 20.4 states: "The time for filing a petition for writ of certiorari runs from the date the judgment or decree sought to be reviewed is rendered . . . ."

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Rule 20.4 also notes that

> [H]owever, if a petition for rehearing is timely filed by any party in the case, the time for filing the writ of certiorari for all parties . . . runs from the date of the denial of rehearing or the entry of a subsequent judgment entered on the rehearing (emphasis added).

On or about August 11, 1988 Petitioner, in an attempt to fall within the tolling provisions of Rule 20.4, filed with the Court of Appeals a request to "clarify" its Order of April 7, 1988 to now state that it was also denying a Petition for Rehearing. (Appendix "D.") The Court of Appeals panel flatly denied this request in its Order filed August 26, 1988 which stated, in its entirety: "[T]he request of appellant Jean Leonard Harris for clarification of the Court's order filed

on April 7, 1988 is DENIED." (Appendix "E.")

Despite the August 26, 1988 Order, Petitioner filed a Supplement to his Petition on or about September 26, 1988 in which he argues his Petition was timely filed. However, Petitioner does not, and cannot, explain why this Court should now accept his Petition which clearly violates the Court's own rules.

Petitioner's time to file the Petition for Writ of Certiorari was not tolled by Rule 20.4 and began to run from the time of the Ninth Circuit's Memorandum Opinion on January 25, 1988. The Supreme Court should not consider the Petition after the time allowed in Rule 20.2 and 28 U.S.C. § 2101(c): 90 days after the entry of judgment or

decree. That 90-day period expired on or about April 24, 1988. Again, as the Supreme Court Chief Deputy Clerk correctly pointed out to Petitioner in his letter of July 13, 1988, "the petition for rehearing en banc order does not toll the time for filing a petition in this Court." (See Appendix "C.")

For the foregoing reasons, since the Petition was not timely filed, the Petition should not be considered by the Court.

B.

PETITIONER HAS NOT PRESENTED ANY "SPECIAL AND IMPORTANT REASONS" UNDER RULE 17 WHY THE SUPREME COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI

A review on writ of certiorari is not a matter of right, but of

judicial discretion, and will be granted only when the petitioner has presented "special and important reasons" for granting that review. Rule 17.1; Durham v. United States, 401 U.S. 481, 91 S.Ct. 858, 28 L.Ed.2d 200 (1971). Rule 17.1, subsections (a), (b), and (c) "indicate the character of reasons" that the Supreme Court will consider in using its judicial discretion to determine whether to grant a review on writ of certiorari. Simply put, using those guidelines contained in Rule 17.1, Petitioner has not presented any "special and important reasons" why the Supreme Court should grant this Petition for Writ of Certiorari.

Petitioner seeks only to have the Supreme Court review the exact same

issues already raised and rejected in the courts below. The gravamen of Petitioner's section 1983 complaint was that his Fourth Amendment rights were violated by the search of his office and residence, and a seizure of documents pursuant to a search warrant issued without probable cause. Petitioner previously raised and litigated the identical claim of a Fourth Amendment violation in the context of his motions to suppress evidence and traverse the search warrant made at the preliminary hearing. The Municipal Court judge hearing the matter ultimately ruled that the searches and seizure in question were with probable cause under applicable California and federal law and did not violate

Petitioner's Fourth Amendment rights. Petitioner pled guilty to the charges against him and waived his rights to appeal in the state criminal proceeding causing the ruling to become final.

In the subsequent section 1983 action alleging a violation of his Fourth Amendment rights, the District Court granted all of the Respondents' Motions for Summary Judgment relying primarily on the doctrine of collateral estoppel. The District Court held that Petitioner was precluded from relitigating constitutional issues already raised in the Municipal Court. On appeal, the Ninth Circuit affirmed the District Court's dismissal of his section 1983 claim on the same grounds of collateral estoppel ruling that:

Because the Fourth Amendment issue underlying Harris' civil action was fully litigated in the state court criminal proceeding, collateral estoppel is available to bar Harris' section 1983 claim and the district court did not abuse its discretion in dismissing Harris' complaint on that ground.

In fact, Petitioner's appeal was so obviously meritless that the Court of Appeals awarded attorneys' fees pursuant to 42 U.S.C. § 1988 which allows defendants in section 1983 actions to recover attorneys' fees when the plaintiff's action is frivolous. The Court of Appeals concluded that "[h]ere the doctrine of collateral estoppel obviously barred Harris' claim. His arguments to the contrary are entirely without merit."

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The apparent thrust of Petitioner's arguments, if any substance at all can be distilled from those muddy waters, seems to be that the Supreme Court is required to settle alleged "differing views" between the Ninth and Seventh Circuits in the application and scope of the doctrine of collateral estoppel. However, it is most significant for this Court to note that Petitioner has not cited one decision by the Ninth Circuit in conflict with a Seventh Circuit decision "on the same matter" as contemplated by Rule 17 which would justify granting certiorari. Petitioner does not articulate any conflicts because there are none.

Under Allen v. McCurry, 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308

(1980), all federal courts must "give preclusive effect to state court judgments whenever the courts of the state for which the judgments emerged would do so." Id. at 96, 101 S.Ct. at 415. The Supreme Court has also instructed the federal courts that they should apply state collateral estoppel law in determining whether a section 1983 claim is precluded by a prior state court proceeding. Haring v. Prosise, 462 U.S. 306, 313, 103 S.Ct. 2368, 2373, 76 L.Ed.2d 595 (1983). Accordingly, the Ninth Circuit ruled in accordance with well-settled California law, Teitelbaum Furs, Inc. v. Dominion Insurance Co., 58 Cal. 2d 601, 607 (1962), that because the Fourth Amendment issue raised by Petitioner was fully litigated in the

state court criminal proceeding, collateral estoppel was a complete bar to his section 1983 claim.

Both the Ninth and Seventh Circuits are in accord that identical issues fully litigated in a state court proceeding are barred from relitigation in a subsequent section 1983 action. Seventh Circuit cases Petitioner cites which apparently refuse to apply the collateral estoppel doctrine in a section 1983 claim when a defendant challenges the "integrity" of the evidence presented in a probable cause hearing are confined to the specific facts of those cases. Petitioner has not articulated any conflict which would rise to the level of a special and

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important reason for the Supreme Court to grant certiorari.

Finally, Petitioner's professed displeasure with the Court of Appeals' award of attorneys' fees to Respondents under 42 U.S.C. § 1988 is understandable, but clearly not a question of federal law requiring Supreme Court review.

In sum, Petitioner has not presented the Court any grounds under Rule 17 on which this Court should grant the Petition for Writ of Certiorari.

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C.

## PETITIONER HAS FAILED TO COMPLY WITH THE REQUIREMENTS OF RULE 21 GOVERNING THE CONTENT AND FORM OF THE PETITION FOR WRIT OF CERTIORARI

Rule 21.5 states that:

> The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition.

Respondents' review of this Petition for Writ of Certiorari, as discussed above, reveals an extremely confusing and rambling discourse of 41 pages (also well outside the 30-page limit imposed by Rule 21.4) which is the absolute antithesis of the "accuracy, brevity, and clearness" required by Rule 21.5.

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Further, Petitioner seeks to have this Court again review and decide settled issues which have been laid to rest long ago. Petitioner's Petition is patently frivolous, as the same appellate issues he presented to the Ninth Circuit and which were ruled completely frivolous by that court are served up once again to this Court. The Petition, virtually nonsensical in the form of an abstract, rhetorical discourse, certainly does not give Respondent or the Court a "ready and adequate understanding of the points requiring consideration" (and in any event, there are none).

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## CONCLUSION

The Supreme Court should not consider this Petition for Writ of Certiorari. The Petition was clearly filed well outside the time limits prescribed and mandated by Rule 20 and the Petition should be denied for that reason alone.

Should the Court decide to consider the Petition, Petitioner has not articulated any "special and important reasons" under Rule 17 which would warrant granting the Writ of Certiorari. Neither has Petitioner complied with the content and form requirements of Rule 21. For all of

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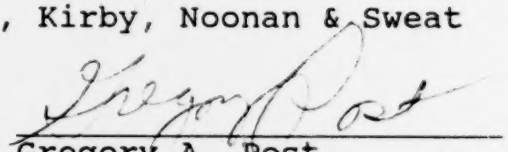
these reasons, this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Post, Kirby, Noonan & Sweat

By: 

Gregory A. Post
Attorneys for Respondent
Myron Klarfeld

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
JAN 25 1988
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

| | | |
|---|---|---|
| JEAN LEONARD HARRIS, | ) | No. 86-6570 |
| | ) | |
| Plaintiff-Appellant, | ) | D.C. No. CV-84-0767-T |
| | ) | |
| v. | ) | M E M O R A N D U M* |
| | ) | |
| DEPUTY DISTRICT ATTORNEY ANTHONY SAMSON, individually and in his official capacity; DEPUTY DISTRICT ATTORNEY DUANE SHINNICK, individually and in his official capacity; DISTRICT ATTORNEY INVESTIGATOR HAROLD WAIGHT, individually and in his official capacity; COUNTY OF SAN DIEGO; RONALD HERPOLSHEIMER; JAMES LORENZ; MYRON KLARFELD, | ) | |
| | ) | |
| Defendants-Appellees. | ) | |

RECEIVED
JAN 27 1988
Post, Kirby, Noonan & Sweat

Appeal from the United States District Court
for the Southern District of California
Howard B. Turrentine, District Judge, Presiding
Argued and Submitted December 11, 1987
San Diego, California

Before: WALLACE, NORRIS, and THOMPSON, Circuit Judges

Harris appeals from the district court's dismissal of his 42 U.S.C. § 1983 claim that the defendants violated his Fourth Amendment rights as a result of a search of his office and residence and the seizure of documents. Applying the doctrine of

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Circuit Rule 36-3.

APPENDIX "A"

collateral estopppel, the district court granted defendants' Motions for Summary Judgment. The court held in part that Harris was precluded from relitigating issues already raised in his state court criminal proceeding and that the Municipal Court had already ruled in that proceeding that the searches and seizure in question did not violate Harris' federal constitutional rights. We affirm. We also hold that the district court did not abuse its discretion when it refused to permit further discovery at the time of the summary judgment motions.

The legal determination that collateral estoppel was available to bar Harris' Section 1983 claim is reviewed de novo. United States v. Geophysical Corp., 732 F.2d 693, 697 (9th Cir. 1984). The district court's application of the doctrine, if available, is reviewed for abuse of discretion. Id.

In determining whether an issue has been fully and fairly litigated such that estoppel can apply, federal courts look first to the law of the state in question. Parsons Steel, Inc. v. First Alabama Bank, 106 S. Ct. 768, 772 (1986). Under California law, "any issue necessarily decided in a prior criminal proceeding is conclusively determined as to the parties if it is involved in a subsequent civil action." Teitelbaum Furs, Inc. v. Dominion Insurance Co., 58 Cal. 2d 601, 607, 25 Cal. Reptr. 559, 375 P.2d 439 (1962).

The gravamen of Harris' section 1983 action was his claim that the defendants violated his Fourth Amendment rights by obtaining a search warrant and conducting a search and seizure of documents in his home and office without probable cause. Harris litigated precisely this Fourth Amendment issue before the Municipal Court in the context of his motions to suppress evidence and to traverse the search warrants. In ruling on these motions, the Municipal Court found that no federal constitutional violation occurred. When Harris pled guilty and waived his rights to appeal in the state criminal proceeding this ruling became final. People v. Charles, 171 Cal. App. 3d 552, 557 (1985). Because the Fourth Amendment issue underlying Harris' civil action was fully litigated in the state court criminal proceeding, collateral estoppel was available to bar Harris' Section 1983 claim and the district court did not abuse its discretion in dismissing Harris' complaint on that ground.

Appellant also argues that the district court abused its discretion in denying his motion to compel additional discovery before ruling on defendants' motions for summary judgment. Since none of the materials sought by appellant would have assisted him on the dispositive issue in the case, the district court did not abuse its discretion in denying appellant's motion to compel discovery.

With the exception of defendant Klarfeld, all of the defendants have requested attorneys' fees pursuant to 42 U.S.C. § 1988. Under that section, defendants in section 1983 actions are entitled to attorneys' fees when the plaintiff's action is frivolous. Roberts v. Spaulding, 783 F.2d 867, 874 (9th Cir.), cert. denied, 107 S. Ct. 399 (1986). Here the doctrine of collateral estoppel obviously barred Harris' claim. His arguments to the contrary are entirely without merit. We therefore award attorneys' fees to defendants Lorenz, Herpolsheimer, Samson, Shinnick, and Waight.

AFFIRMED.

NOT FOR PUBLICATION

FILED

APR 7 1988

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | | |
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| JEAN LEONARD HARRIS, | ) | No. 86-6570 |
| | ) | |
| Plaintiff-Appellant, | ) | D.C. No. CV-84-0767-T |
| | ) | |
| v. | ) | O R D E R |
| | ) | |
| DEPUTY DISTRICT ATTORNEY ANTHONY SAMSON, individually and in his official capacity; DEPUTY DISTRICT ATTORNEY DUANE SHINNICK, individually and in his official capacity; DISTRICT ATTORNEY INVESTIGATOR HAROLD WAIGHT, individually and in his official capacity; COUNTY OF SAN DIEGO; RONALD HERPOLSHEIMER; JAMES LORENZ; MYRON KLARFELD, | ) | |
| | ) | |
| Defendants-Appellees. | ) | |

Before: WALLACE, NORRIS, and THOMPSON, Circuit Judges

The panel, as constituted above, has unanimously voted to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for en banc rehearing and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The suggestion for a rehearing en banc is REJECTED.

APPENDIX "B"

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

July 13, 1988

JOSEPH F. SPANIOL, JR.
CLERK OF THE COURT

AREA CODE 202
479-3011

Mr. Jean L. Harris
16776 Bernardo Center Drive
Suite 110 B
San Diego, CA 92128

Re: Jean Leonard Harris v. Anthony Samson, Deputy District Attorney, et al.

Dear Mr. Harris:

Your petition for writ of certiorari typed on letter-sized paper was received July 12, 1988 and is returned. Such petition must be presented on paper which is 6 1/8 by 9 1/4 as required by Rule 33 of the Rules of this Court. The opinions and orders of the lower courts must also be retyped on paper which is 6 1/8 by 9 1/4 inches.

Furthermore, it would appear that this petition is out of time. Since judgement was entered by the Court of Appeals on January 25, 1988, the time to file this petition expired April 24, 1988. The petition for rehearing en banc order does not toll the time for filing a petition in this Court. Even if the April 7th order were controlling, the petition would have to have been received in this office on or before July 6, 1988 which was ninety days from the date of the order. Filing in this court is date of receipt by the Clerk, not the date of mailing. See Rule 28.2

Very truly yours,

JOSEPH F. SPANIOL, JR., Clerk
By

Francis J. Lorson
Chief Deputy Clerk

Enclosures

cc: Paul N. Bruce, Esq.
Michael L. Lipman, Esq.
Gregory Post, Esq

Cathy A. Catterson, Clerk
United States Court of Appeals
for the Ninth Circuit
(Your No. 86-6570)

APPENDIX "C"

**Jean Leonard Harris**
16776 Bernardo Center Drive
Suite 110 B
San Diego, California 92128
(619) 485-1177

August 8, 1988

Clerk of the Court
United States Court of Appeals
Ninth Circuit
Seventh and Mission Streets
Post Office Box 547
San Francisco, California 94101

Re: Harris v Samson et al
No 86-6570
D.C. No. CV 84-0767-T

Dear Clerk:

I am requesting that a clarification of the Order filed on April 7, 1988, be made. I have discussed this matter with Joe Williams of your office. The Petition For Rehearing En Banc, was docketed as a Petition for Rehearing together with a suggestion for hearing en banc. However, the Order only makes reference to a rejection of the suggestion for a rehearing en banc without reference to or a denial of the Petition for Rehearing. As I understand, the order normally reads that the Petition for Rehearing is denied and the suggestion for a rehearing en banc is rejected. I ask that the Order in this matter be clarified to read accordingly.

The reason for the request is as follows. The Clerk of the United States Supreme Court will accept the Petition for Writ of Certiorari within 90 days of denial of the Petition for Rehearing. Without mention within the order that the Petition for Rehearing was denied, the Clerk of the Supreme Court will not speculate as to the effect of the above order in this case. That is, the order must specifically mention that it is also a denial of the Petition for Rehearing. With this clarification, the Clerk of the Supreme Court will accept for filing the Petition for Writ of Certiorari already in his possession.

Respectfully Requested,

Jean Leonard Harris

cc Paul Bruce, esq.
Michael Lipman, esq.
Gregory Post, esq.

Francis J. Lorson
Chief Deputy Clerk
Supreme Court of the United States

APPENDIX "D"

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 26 1988

CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

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|---|---|---|
| JEAN LEONARD HARRIS, | ) | No. 86-6570 |
| | ) | |
| Plaintiff-Appellant, | ) | D.C. No. CV-84-0767-T |
| | ) | |
| v. | ) | O R D E R |
| | ) | |
| DEPUTY DISTRICT ATTORNEY ANTHONY SAMSON, individually and in his official capacity; DEPUTY DISTRICT ATTORNEY DUANE SHINNICK, individually and in his official capacity; DISTRICT ATTORNEY INVESTIGATOR HAROLD WAIGHT, individually and in his official capacity; COUNTY OF SAN DIEGO; RONALD HERPOLSHEIMER; JAMES LORENZ; MYRON KLARFELD, | ) | |
| | ) | |
| Defendants-Appellees. | ) | |

Before: WALLACE, NORRIS, and THOMPSON, Circuit Judges

The request of appellant Jean Leonard Harris for clarification of the Court's order filed on April 7, 1988 is

DENIED.

APPENDIX "E"

PROOF OF SERVICE BY MAIL
(C.C.P. 1013a(3) and 2015.5)
(U. S. Supreme Court Rule 28)

Harris v. Klarfeld
Case No. 86-6570
D.C. No. CV-84-0767-T
Supreme Court No. 88-543

I, the undersigned, declare: That I am, and was at the time of service of the papers herein referred to, over the age of eighteen years, and not a party to the action; and I am employed in the County of San Diego, California, in which county the within-mentioned mailing occurred. My business address is 701 B Street, Suite 1400, San Diego, California 92101.

I served the following document(s): BRIEF FOR RESPONDENT MYRON KLARFELD IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

on the parties in said action by placing a true copy thereof in a separate sealed envelope for each addressee named hereafter, addressed to each such addressee respectively as follows:

SEE ATTACHED SERVICE LIST

and I then sealed each envelope and, with the postage thereon fully prepaid, placed it for mailing in accord with our business' practice on November 1, 1988 at San Diego, California.

I am readily familiar with our business' practice for collecting, processing and mailing correspondence and pleadings with the United States Postal Service. Such correspondence and pleadings are deposited with the U. S. Postal Service on the same day that it is placed for mailing in the ordinary course of business.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct, and that this Proof of Service was executed on November 1, 1988.

Sharenda K. Gates

Sharenda K. Gates

SERVICE LIST

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